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October 3, 2005

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 - 12th Street, SW  
Washington, DC 20554

**RECEIVED**

OCT - 3 2005

Federal Communications Commission  
Office of Secretary

Re: MB Docket No. 05-210  
RM-10960

Dear Ms. Dortch:

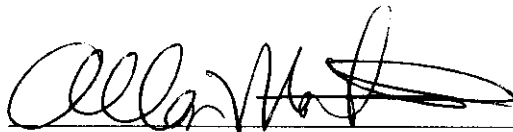
On behalf of Keymarket Licenses, LLC, Forever Broadcasting, LLC, Forever Communications, Inc., Megahertz Licenses, LLC and Forever of PA, LLC, we herewith submitting an original and four (4) copies of "Comments" in the above-referenced proceeding regarding the "Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services".

Should any questions arise with respect to this matter, please contact the undersigned counsel.

Respectfully submitted,

KAYE SCHOLER LLP

By:

  
Allan G. Moskowitz

AGM/lis

Enclosure

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**Federal Communications Commission**

WASHINGTON, D.C. 20554

In the Matter of )  
 )  
 Revision of Procedures Governing )  
 Amendments )  
 To FM Table of Allotments and )  
 Changes )  
 Of Community of License in the )  
 Radio Broadcast Services )  
 TO: The Commission )

MB Docket No. 05-210  
 RM-10960

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Federal Communications Commission  
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**COMMENTS**

Keymarket Licenses, LLC, Forever Broadcasting, LLC, Forever Communications, Inc., Megahertz Licenses, LLC and Forever of PA, LLC (collectively "Keymarket")<sup>1</sup> hereby submit their "Comments" in the above-referenced proceeding pursuant to the "Notice of Proposed Rulemaking" ("NPRM") FCC 05-120, released June 14, 2005. In support thereof, the following is respectfully shown:

**BACKGROUND**

1. The instant proceeding arose as a result of the "Petition for Rulemaking" filed on March 5, 2004 by First Broadcasting Investment Partners, LLC ("First Broadcasting"). While First Broadcasting's Petition proposed a number of changes to the Commission's FM allotment procedures in order to expedite the process, the Commission's NPRM selected only a few of the

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<sup>1</sup> The respective licensees are commonly owned and collectively are the licensees of over fifty (50) AM and FM stations. The stations licensed to each licensee are attached as Exhibit 1.

proposals raised. Keymarket's comments regarding the specific proposals chosen by the Commission are as follows:

**A. AM and FM Station Community of License Changes by Minor Modification Applications.**

2. The Commission proposes that changes of AM and FM broadcast stations' community of license should be resolved by minor modification applications on a first come - first served basis rather than by AM auction filing window applications or FM rulemaking proceedings to change the Table of Allotments.

Keymarket strongly supports this proposal for all of the reasons elucidated by First Broadcasting. We also support the proposal to the extent that should an FM change of community application require other changes that themselves constitute minor changes, such as a move to an adjacent channel or a one step upgrade or downgrade in station class, that such additional proposals be filed simultaneously with the community of license change application. However, we question the retention of Section 73.3517(e) which limits contingent applications to four.

Keymarket does not believe that it is in the public interest to prevent five or even ten stations from a possible improvement of coverage if the licensees or permittees voluntarily have agreed to a plan which would maximize their facilities. In light of the fact that the Commission presently has no limitation on the number of channel changes that may be proposed in one proceeding to amend the Table of Allotments, Keymarket believes that the limitation of contingent applications to four is unsupported by

any basis save conservatism and is inimical to the public interest.

3. Additionally, while Keymarket supports the proposal that an FM application to change community of license may propose non-minor changes to the Table such as vacant allotment channel substitutions or reference coordinate changes, it strongly opposes allowing these minor change applications to propose involuntary channel changes to existing facilities without notice and appellate rights. Substitutions of vacant allotments or changes in reference coordinates have little or no effect on the operations of existing broadcast stations or the listening public while a proposal to change the operating frequency of an existing FM station without the consent of the licensee has many ramifications. Pursuant to Section 73.3584 of the Commission's Rules, minor modification applications are not subject to petitions to deny but rather only informal objections which have lesser, if any, appellate rights. The inability of a licensee to appeal an involuntary channel change if granted is a substantial abrogation of the licensee's rights. Consequently, Keymarket strongly opposes allowing the proposal of involuntary channel changes to existing facilities in these proposed minor modification applications without requisite notice to the licensee and without affording that licensee a process to challenge the proposal which entails formal appellate rights.

4. The Commission also tentatively concludes that AM or FM applications for change of community of license must include a

detailed exhibit demonstrating that the proposed change constitutes a preferential arrangement of allotments under Section 307(b) of the Act as compared to the existing arrangement and Keymarket agrees. However, Keymarket does not believe that it would be in the public interest to place further restrictions on applicants regarding the requirements of Section 307(b). The Commission notes that the allotment priorities and the historical policies in allocation rulemaking proceedings "have been designed to limit the clustering of stations in urbanized areas and to ensure adequate levels of remaining aural service to rural areas". While the Commission is apparently seeking comments to strengthen these policies (see Paragraphs 28 and 46), Keymarket submits that the existing technological and demographic realities should suggest to the Commission that those policies should be loosened rather than strengthened. First, by any indicator, it is beyond doubt that the U.S. population has shifted from rural to urbanized areas in the past fifty years. Moreover, there is virtually no inhabited white area left in the mainland U.S. With the growth of satellite radio, internet radio and the forthcoming digital radio, the basis for continuing to stringently enforce Section 307(b) will become more and more questionable and, therefore, placing further burdens on licenses who wish to change community of license is, and will be, counterproductive. For example, why should there be a new local notice requirement for a change of community of license by application when there has never been such a requirement for changes of community of license

pursuant to the rulemaking process? While Keymarket recognizes the Commission's concern that communities continue to have local voices and outlets, forcing radio stations to stay in a community which cannot economically support them by not allowing them to move to another community that will support them will inevitably result in more silent stations. Conversely, if there is a community or market that is underserved, a station or stations will relocate to serve it. At some point (maybe in this proceeding), the Commission must come to terms with the contradiction between its historical mindset regarding the strictures of Section 307(b) and current and near future market, technological and demographic realities.

5. Further, Keymarket proposes that applications to change community of license should be further streamlined to eliminate the requirement that an existing station which wishes to change community of license must comply with Section 73.207 but rather submits that the station's new transmitter site merely comply with Sections 73.213, 73.215 and city grade coverage requirements. There is no public interest reason why a station that could comply with Section 73.213 or 73.215 and can provide city grade coverage to the proposed community of license be foreclosed from changing community of license simply because it does not comply with the requirements of Section 73.207.

B. Filing of Form 301 When Filing Petitions  
to Amend the Table to Add an FM Allotment.

6. Without repeating the statistical evidence, the last five or six years have seen an inordinate rise in FM allotment petitions filed by a relative handful of parties who do not file applications for those channels despite their requisite declarations to the contrary and whose amount of "drop ins" cause a serious backlog for allocations processors and delay or otherwise block legitimate rulemaking proposals by existing broadcasters and bona fide petitioners. Consequently, the Commission proposes that a proponent or counterproponent seeking to add a new allotment to the Table simultaneously file Form 301 for a new FM construction permit at the proposed community and pay the required fee for that filing application.

7. Keymarket strongly supports this proposal. Keymarket does not believe this proposal would create any undue burdens or delays in processing or awarding of new construction permits. The Form 301 of original proponents should be kept on file and, in the event the proponent is the auction winner, can be processed to grant. If the original proponent is not the successful bidder its filing fee should be returned to it. If, however, the original proponent, despite certifying that it intended to participate in the auction, does not participate it should not have its filing fee refunded. Moreover, neither the preparation of the form nor the proffering of the fee should be a

very high hurdle to legitimate proponents, whether small business, women, or minorities.

C. Limit the Number of Channel Changes that May be Proposed in One Preceding to Amend the Table.

8. The Commission proposes to supplement the "Columbus, Nebraska Policy" to not only prohibit proposals involving more than two involuntary channel substitutions but to limit the total number of allotment proposals set forth by a party in a given petition to amend the Table to five despite the fact that there is an agreement among the parties, unless the proponents or counter proponents can demonstrate special factors involving significant public interest benefits. The Commission's sole basis for this proposal is that these proposals are difficult and consume significant staff resources. Keymarket opposes the Commission's proposal for various reasons. First, by implementing the two major proposals in this rulemaking, i.e., (a) moving changes in community of license from a rulemaking procedure to an application procedure and (b) requiring the filing of Form 301 accompanied by a filing fee with any petition or counterproposal for a new FM allotment, the staff devoted to allocations would be considerably freed up from their current workload and, therefore, would have sufficient staff resources to work on the "complex" and "difficult" cases. Second, considering the numerous additions to the Table in the last decade, limiting the number of changes to the Table in one proposal may prevent "the best means to ensure an efficient distribution of channels"



and may, in fact, defeat the purpose of ensuring the fair, efficient and equitable distribution of radio service. Third, there are only a few petitions and counterproposals that exceed five community of license changes filed each year. Since the Commission has been successful in processing these larger proposals in the past under a much heavier workload than will be expected after this proceeding, the Commission's argument that they should cease doing so in the future because they are difficult makes no sense. Consequently, Keymarket opposes putting any cap on the number of channel changes in a single petition for rulemaking or counterproposal.

**D. Eliminate Rule Prohibiting Electronic Filing for Petitions for Rulemaking to Amend the Table.**

9. Keymarket supports the elimination of the rule and is confident that the electronic filing of such petitions will further streamline the process of amending the Table of Allotments and that such a change would be in the public interest.

**E. Relocation of a Community's Sole Local Station to Become Another Community's First Local Station.**

10. Keymarket reiterates its support for First Broadcasting's proposal that a presumption be established that it is in the public interest to permit a station providing a community's sole local service to move to another community provided that: (a) at least two other stations provide principal

community service to the entirety of the current community; (b) the station will be the first local transmission service in the proposed community; (c) the station moving would provide city grade service to a larger population in the proposed community of license. However, Keymarket reiterates its proposal that, due to improvement in analog FM receivers and the soon to be implemented digital audio broadcasting systems, the 60 dBu contour should be used to determine adequate community coverage rather than the 70 dBu signal that First Broadcasting proposes. Further, we don't support the proposed requirement that existing short-spacings be ameliorated, but instead propose as a condition merely that they not be exacerbated, assuming again that the relocation does not have to comply with Section 73.207. While we would support the requirement that the new community have greater population than the community from which the station is to be relocated, we do not believe there is any necessity that the new community's population should exceed the current community by a certain percentage but rather that the existing standard, i.e., a larger population, should suffice.

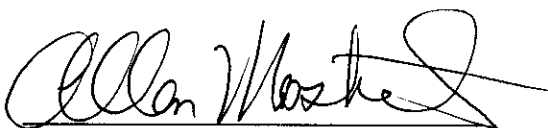
11. Many of the other questions that the Commission proposes in paragraph 46 should be answered in the negative. In essence, radio service and radio stations flow to those that need and want them. If a community cannot support its radio station, that radio station will ultimately go silent. The fact that some artificial ratio of reception services between the old and new communities will effectually prohibit the station's survival may

not be in the public interest. Again, Keymarket does not see the need for additional notice requirements that don't exist now. Keymarket suggests that if the Commission is amenable to adopting this proposal, it should keep the hurdles few and not exceedingly high.

#### CONCLUSION

12. Keymarket reiterates its strong support for the principal proposals first outlined in First Broadcasting's Petition and submits that implementation of the proposals; (1) AM and FM community of license changes by minor modification applications; (2) mandating the filing of Form 301 and the required fee when filing petitions for rulemaking or counterproposals to add an FM allotment; and (3) allowing relocation of the community's sole local transmission service to become another community's sole local transmission service, are all in the public interest and will considerably reduce the workload of the Commission's staff and allow it to better marshall its resources. Moreover, adoption and implementation of these proposals will expedite the process and allow FM applicants and existing broadcasters to better plan and implement modifications to their facilities and improve their service to the listening public.

Respectfully submitted,

By: 

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Attorney for Keymarket  
Licenses, LLC, Forever  
Broadcasting, LLC,  
Forever Communications,  
Inc., Megahertz  
Licences, LLC  
and Forever of PA, LLC

Dated: October 3, 2005

**EXHIBIT 1****BROADCAST LICENSES**

as of 09/08/05

Call Sign	Location	Facility Identifier
<b>Forever of PA, LLC</b>		
WFBG(AM)	Altoona, PA	38269
WFGY(FM)	Altoona, PA	38265
WLTS(FM)	State College, PA	38271
WRKY-FM	Hollidaysburg, PA	72316
<b>Forever Broadcasting, LLC</b>		
WWGY(FM)	Grove City, PA	74469
WYOT (FM)	Ebensburg, PA	64845
WKYE (FM)	Johnstown, PA	15328
WALY(FM)	Bellwood, PA	58312
WWOT (FM)	Altoona, PA	47090
WVAM(AM)	Altoona, PA	47089
WMAJ(AM)	State College, PA	48923
WJHT (FM)	State College, PA	48926
WQWK (FM)	Pleasant Gap, PA	30445
WMGW(AM)	Meadville, PA	24942
WGYY(FM)	Meadville, PA	24940
WHUZ(FM)	Saegertown, PA	12918
WFRA(AM)	Franklin, PA	49777
WOXX(FM)	Franklin, PA	49789
WOYL(AM)	Oil City, PA	21420
WGYI(FM)	Oil City, PA	21421
WTIV(AM)	Titusville, PA	74089
WXXO(FM)	Cambridge Springs, PA	76254
WUUZ(FM)	Cooperstown, PA	88380
WJST (AM)	New Castle, PA	24997
WKST (AM)	New Castle, PA	71246
WRSC (AM)	State College, PA	64849
WBUS (FM)	Boalsburg, PA	6025
WNTJ(AM)	Johnstown, PA	72964
WFGI-FM	Johnstown, PA	72965
WNTW(AM)	Somerset, PA	56364
WRKW (FM)	Johnstown, PA	64848
W228AO (FM)	Johnstown, PA	64846
<b>Megahertz Licenses, LLC</b>		
WWLY(FM)	Huntingdon, PA	28132
WHUN(AM)	Huntingdon, PA	28131
WXOT (FM)	Mount Union, PA	3956

<b>Forever Communications, Inc.</b>		
WBVR-FM	Auburn, KY	71244
WRKY(AM)	Murray, KY	73270
WFGE(FM)	Murray, KY	73269
WNBS(AM)	Murray, KY	29695
WBGN(AM)	Bowling Green, KY	27243
WUHU(FM)	Smiths Grove, KY	27242
WLYE-FM	Glasgow, KY	57897
<b>Keymarket Licenses, LLC</b>		
WASP(AM)	Brownsville, PA	65708
WOGG(FM)	Oliver, PA	65709
WFGI(AM)	Charleroi, PA	21215
WOGI-FM	Duquesne, PA	21214
WOMP(AM)	Bellaire, OH	3038
WOMP-FM	Bellaire, OH	3039
WSTV(AM)	Steubenville, OH	65407
WOGH(FM)	Burgettstown, PA	65408
WOHI(AM)	East Liverpool, OH	13710
WOGF(FM)	East Liverpool, OH	13711
WPNT(AM)	Connellsville, PA	39859
WUKL (FM)	Bethlehem, WV	4996
WPKL(FM)	Uniontown, PA	33828
WKPL (FM)	Ellwood City, PA	24999